competition" and they will certainly use those rates to respond to CAPs with "at risk" customers. Therefore, whether the LECs charge a higher rate for some DS1 and DS3 services where they do not face competition, the rates that CAPs will have to compete with when they collocate are the discounted rates. This is an undeniable fact of the marketplace. Accordingly, the LECs must demonstrate that their collocation rates involve cost principles and overhead loadings that are fully consistent with, and no less favorable to the LECs than the overhead loadings used by the LECs for their discounted services. In the absence of such demonstration, the collocation rates must be viewed as unlawfully discriminatory and the Commission's objective of using expanded interconnection to achieve a neutral competitive platform is doomed to failure. No LEC has provided such a showing.[33]

An example of how the LECs have manipulated the overhead data to obscure their anticompetitive pricing is presented by BA's discussion of their overhead loadings. First, BA states that the ARMIS specified average loading applied to special access servicesis 1.68. (See BA Exhibit 9). They then offer as the comparative loading factors for their DS1 and DS3 services a list of loading factors that shows overheads ranging with few exceptions from 2.28 for "Basic Plan" DS1 up to 5.59 for Optical Interface DS3G service. (See Exhibit 10). If the overhead numbers presented in these two exhibits are formulated on the same cost standard, it defies both logic and arithmetic that the inclusion of all these

[33] It is common sense that the LECs can only justify - only "need" - additional pricing flexibility, such as Zone Density Pricing, where they are arguably "at risk" of losing customers with their Price Cap rates. Since they have purported to justify their term and volume discounts as consistent with current rules, and since it is only where they are "at risk" of losing customers that LECs face real, as opposed to theoretical, competition from CAPs, those discounted rates are clearly the only rates relevant to an analysis of comparability, reasonableness, and discrimination.

high overhead numbers could result in the 1.68 "overhead loading factor" that BA says is its special access service average and thus applicable to collocation services.

BS, for its part, is more candid in explaining that it has not applied the same loading arrangements for its DS1 and DS3 services and its collocation services.[34] Instead, a review of its materials indicates that it has assigned across-the-company overheads to its collocation offerings, while the loadings applied to its DS1 and DS3 services are not only entirely different but entirely unexplained, obscured by the veil of "Price Caps."[35] However, BS nonetheless makes clear that its definition of "cost" for the two services is vastly different. It describes, ALTS presumes with accuracy, that the costs it is showing for its expanded interconnection services are "Fully Assigned Costs" (Exhibit 2, Appendix C), while the "Price-Ceiling (Overhead) Ratio Calculation" for its price cap services is based on "Incremental Costs" (Exhibit 2, Appendix E).

2. Floor Space Charges Represent Monopoly Rents.

Although the LECs have complained mightily about being forced to become landlords, they have taken maximum advantage of the opportunity by establishing rates that would make commercial landlords envious. The justifications provided for these rates fall far short of meeting the Commission's requirements and establishing the reasonableness of the rates. Indeed, without exception the ratemaking approaches defended by the LECs as

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[34] "BS calculates a price-ceiling ratio for special access services and uses that price- ceiling ratio to insure that a special access new service rate recovers no more than a justifiable and occasionable amount of overhead costs... BS did not use the price-ceiling ration to set the rates in EIS and VEIS." Exhibit 2 at 29.

[35] BS's simple defence of this obvious discrimination is that "the Commission's price cap plan has established a sharing mechanism which limits BS's earnings. This mechanism assures that BS does not over-recover its costs." Exhibit 2 at 35.

reasonable for their collocation rates result in charges that are much higher than the costs they attribute to themselves, by means of their so called building usage factors, in their justifications of their term and volume discounts for DS1 and DS3 services. As discussed above with respect to overheads, such discrimination is not reasonable, is anti-competitive, and will not serve the Commission's expanded interconnection objectives.

- For example, Ameritech derives its floor space costs using Means data, and fails entirely to provide the market and book values of comparable real estate as required by the Commission.[36]

- GTE also uses replacement cost, but it does compare these costs with embedded and market costs. The result is that its rates are essentially twice the rates that would result from the use of embedded costs or from BOMA. GTE unabashedly contends that these market rates are not relevant: since its space is not commercially available, it has a higher value. GTE at 13-14. In other words, since it is a monopoly, it has a right to charge monopoly rents.

- BS, on the other hand, has used embedded costs to develop its floor space rates, but like Ameritech it has failed to provide the market values required by the Commission, baldly asserting (like GTE) that they are not relevant since there is no other central office space and no other space would be comparable. Exhibit 4, at 3. - NYNEX, which used embedded investment, failed to provide market value information as required by the Designation Order.

[36] Ameritech's statement that market value data is not available borders on the incredible. Ameritech at 13.

- SWB used BOMA market data. However, it then voided the relevance of the market data by multiplying it times a 1.72 loading factor based on R.S. Means data. SWB at 11.

- USW, by contrast, used market data to derive its cost base. However, it then increases its "base" data by almost 50% through the addition of other factors: first, it multiplies the base rent by factors of 1.17, for rentable versus usable space (in effect charging for space already being charged to others); next, it adds property tax and maintenance factors (the both being multiplied by other significant overhead factors); and then it applies an overhead factor to the result. The resulting rates are at least the equivalent of top quality "built-out" space in the best office buildings in their most expensive markets. Even USW's comparison of the resulting rates to its embedded costs for buildings and land shows that USW is charging its competitors more than its fully loaded annualized costs plus overheads. USW at 45-51.

- BA bases its rates on a sampling of "listed" rates for real estate. It is common knowledge in the real estate market that nobody pays listed rates, unless the landlord is a monopoly. BA at Exhibit 13.

It is plainly unreasonable for collocation rates to be priced at the level that an interconnector would have to incur to build the same space from scratch today. This is particularly the case where the LEC has not established that it is charging other customers for the use of the same space in the same manner. As further evidence of the reasonableness of their space rental rates to the interconnectors, the LECs should be required to detail the building usage factors they have included in justifying their volume and term discounts. This will enable the Commission to make a meaningful comparison of what the LECs view as costs of space utilized for retail purposes versus how they want to assess competitors. Pending the submittal of such information, the Commission should prescribe a maximum rate equivalent to the rental rates for Class B office space in the central office location, as proposed by ALTS in its Tariff Opposition. Id. at 14.

3. Build Out and Other Non-Recurring Charges Include Unnecessary Costs and Double Charging, To Create Enormous Barriers To Entry.

The LECs have proposed widely disparate approaches to charging for space construction, and the data and justification they have submitted almost defy analysis. However, there is no doubt that high charges proposed by most LECS have not been and cannot be justified. For example:

- USW achieves very high charges through the use (among other things) of multiple layers of loadings. On its basic construction costs it applies a 20% construction contingency, a 20% Americans for Disability (ADA) factor, and a 15% engineering consulting loading, to all construction elements. After adding that 55% loading, it then adds to that "direct" cost another .72 overhead factor. The result is that a $1000 item is charged to a collocator at the rate of $2857. See, USW at 11-12 and TRPs.

- similarly, USW turns a $36.65/hour construction project management engineer into a $95.64/hour cost element, which is then loaded with a 1.72 overhead, resulting in a price per hour to the collocator of $162.50. This same arithmetic is used to derive the rates for all 16 construction provisioning NRCs.[37] See USW at 112-113 and TRPs.

- following these approaches, USW converts a base construction cost for a wire cage of $9510 into a $27,090 rate element. For an additional $15,672 a collocator can obtain a redundant air conditioning unit for its 100 square feet. See USW at 14 and TRPs.

- USW appears to double count power and equipment. It puts HVAC equipment and power costs in some functions, such as interconnector specific construction, and then states that it must also add for itself incremental AC to cover the heat generated by equipment, and then charge the collocator extra power for this incremental equipment, and then, of course, these "direct" costs must receive the obligatory 1.7 overhead loading. See USW at 18 and TRPs.

- BA's approach to construction costs results in a $353.55 "selling price" for a standard two-socket electrical outlet, which, incidentally, required eight hours to install. BA at Exhibit 7.

- GTE adds additional costs to construction on the unsubstantiated theory that the additions will increase the value of the buildings and therefore its property taxes which increase should be borne by the collocator that caused the increase. GTE at 11.

- BA offers rates for both Standard and Non-Standard enclosures, with the election

[37] The effects of this overloaded approach to non-recurring rate development is aggravated in the case of USW and other LECs (e.g., NYNEX) by the excessive use of non-recurring charges. Of the Commission's 14 TRP functions, USW has recurring charges covering only five functions while non-recurring charges are applied to all but two functions.

being BA. Further, its description (in response to the specific requirement of the Designation Order) of where Non-Standard enclosures might be required suggests that BA could reserve the right to require them in virtually any central office. See BA, Attachment B at 34. In view of its weak explanation, the opportunity for abuse that is presented by the vague standards it has articulated, and the fact that other LECs have not deemed it necessary to make the distinction that BA proposes, the Commission must reject a separate rate for Non-Standard enclosures.

- SWB provides one of the most egregious examples of barriers to entry by determining to charge NRCs for all of its collocation equipment. SWB states that it must employ this pricing strategy because it "has no guarantee how long an interconnector will remain in business...[and] the equipment is...not reusable." SWB at 24. The most outrageous attempted justification for this practice is SWB's assertion that it is an inefficient economic signal for it to invest in the collocation equipment.[38]

<u>POT Bays</u>

Among the areas of significant apparent abuse are the requirements for POT Bays. No LEC proposing the use of POT Bays or their equivalent has made a convincing

[38] "In addition, the true costs of entry should determine whether, and which, firms actually come into a market. For example, inefficient entry could occur if potential entrants find LEC interconnection rate structures (predicated on recurring charges recovering all start up costs) provide more favorable terms than they could get in financial markets if they were required to borrow the necessary start up capital." SWB at 24.

showing that this should be a required rate element.[39] For example, NYNEX requires POT Bays, with its sole justification being that they have worked at the state level, will be advantageous to the collocator, and will avoid the creation of additional security problems. NYNEX at A-22.[40] Neither the first nor last reasons constitute adequate justification for such a questionable charge, and if they are offered based on the collocator's benefit, they should at least be made optional. SWB, by contrast, does require POT Bays but at least permits the collocator to provide its own POT Bay and interconnection arrangements. SWB at 15-16. Given the conflicting positions taken by the LECs on this issue, these rate elements should be disallowed absent extraordinary showings, which no LEC has made.

4. Cross Connect Charges Are Plainly Discriminatory And Excessive In Relation To the LEC Retail Rates.

But one example of discriminatory and excessive charges for cross-connects regards the required use of repeaters. Several LECs propose the extensive use of repeaters, while others indicate a very limited need for repeaters. It is significant that even the LECs that require repeaters employ different standards for their necessity. Thus, BS states that repeaters are only necessary when a cable length exceeds 655 feet for a DS1 and 450 feet for a DS3. BS Exhibit 4 at 6. By contrast, BA, which also requires POT Bays, says that

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[39] Indeed, the most convincing showing has been made by the LECs that do not include such facilities. While standardization may not be required, when even one LEC does not deem it necessary to include a facility that plainly adds large additional costs, and when those proposing it generally defend it use at least in part on the basis of its benefit to the collocator, the item should be rejected in the absence of the most compelling justification.

[40] See SWB at 15-16, where SWB explains the need for POT Bays based on different reasons than those presented by NYNEX. USW also requires the use of POT Bays, which it calls a DSX. Like NYNEX, USW explains its use of the DSX in part on the basis of benefitting the collocator. USW at 57.

repeaters are required for every circuit. It references Bellcore recommendations as the basis for the "repeater on every circuit" requirement. BA at Attachment B at 25. Ameritech also requires extensive use of repeaters without adequate justification, with the required use apparently exacerbated by its POT Bay. Ameritech Transmittal 730, D & J at 6. USW indicates repeaters will be required in most case, with multiple repeaters required in 35% of the cases. USW at 54. SWB, on the other hand, states that its design requires no repeaters. SWB at 15. Given the disparity of views regarding the need for repeaters, and the relative high percentage of the cross-connect charges that they become if used,[41] the Commission should reject required repeaters in the absence of exceptional showings based on credible and verified technical information.

5. Power Charges Are Set Artificially High.

In general, the LECs have explained their approach to power rates in terms of keeping costs down, but the nature of their rates makes clear than significant overcharges would result.

- Ameritech and others use a cost per fuse amp rating approach, rather than metered. Ameritech at 22.[42] The obvious result is that a collocator must order more power than it expects to require at peak load, in order to have some margin, and then pay Ameritech at that high level on a full time basis, resulting in significant excess costs (and windfall revenues to Ameritech).

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[41] BA indicates that for its initially filed cross-connection charge, repeaters comprised about 25% of the DS1 rate and 35% of the DS3 rate: under the FCC's RHFID rates, repeaters count for 95% of the DS1 charges and 77% of the DS3 rates. Id.

[42] USW adopts a similar approach. USW at 71.

- Other LECs, such as GTE, charge for power on a per square foot basis. GTE AT 33-34. In the case of GTE, its charges for power apparently will sometimes exceed its floor space rental. GTE at 18.

- SWB has a minimum charge for power based on 40 amps, but the next increment jumps up to 100 amps. This is an unreasonable requirement, when other LECs offer increments of 10 amps or less.

6. Charges For Security Constitute Unnecessary Impediments To Competitive Entry.

Several of the LECs impose high charges for the installation of security equipment and for escort services. The need for these charges has not been justified.

- Ameritech tries to justify its escort requirement by saying that its contractors, unlike Interexchange Carriers, are not required to have escorts because they receive special instructions and screening. Ameritech at 18. It should be obvious that the same measures could be undertaken for collocators, if they are part of Ameritech's regular practice, with the avoidance of the excessive charges.

- USW requires escorts at all times, and it charges for "travel time" while a collocator waits for the escort to be provided.[43] USW at 57-60. Thus, the collocator not only has to wait to access the space and facilities for which is paying so much, but it must also pay USW for this time, with USW having an obvious financial motivation (not to mention competitive one) to make that "travel time" as slow as

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[43] Incredibly, USW excuses its position on the basis that "it is the interconnectors that demanded occupancy in LEC's central offices, not the LECs who invited them in. It is the interconnectors who must bear the "cost" (which is now represented in financial terms) of being there." USW at 62.

possible.

- SWB also requires escorts, unless there is separate access, and it charges for this escort "service" at the rate of $30.93 per half hour. SWB at 21. This is an extraordinary rate level, compared for example to the more reasonable USW level of $10-15 per hour. Further, SWB proposed unjustified and excessively high non-recurring charges for security installation. Depending on the central office size, the security installation charge will run from $5,196 to $15,130 per interconnector! SWB at 21.

- GTE's charges for the installation of security equipment range from $10,000 for a "simple" office up to $30,000 for a "complex" office, with no definition of these terms nor discussion of why either charge is reasonable and such a large range is appropriate. GTE Attachments 1 and 2. Also, GTE requires an escort on some occasions.

- BA also establishes and vigorously defends significant security escort requirements: "BA has no choice but to require security escorts when the central office configuration does not accommodate a completely securable entry path and collocator work area." BA at 26. BA even expresses concern about competitors stealing its information. This is at best an absurd and unfounded position. Moreover, as shown by the attached Affidavit of Gary Lasher, President of Eastern Telelogic Corporation which operates extensively in BA's territory (Exhibit A), BA's paranoia is not shared by the rest of the industry operating in its area and standard industry practice appears to have been incorrectly stated by BA itself.

- BS also provides extremely high and absolutely unjustified NRC charges for security installation, $12,500 per interconnector. BS at Exhibit 4, at 12.

In short, these kinds of excessive security-based charges do not reflect the practice of the telecommunications industry to date and are not required for the maintenance of appropriate security in central offices where collocation occurs. They are a specious affront to the integrity of the competitive local access industry and they constitute a wholly unjustified attempt to load costs on the LECs' competitors to slow, if not stop, their competitive entry.

7. **Other Examples of Excessive And Unjustified Charges**.

Other examples of excessive charges that have not been, and we suspect cannot be, justified are the following:

- Rate structures that impose very heavy charges on the first collocator (even if subject to a pro rata refund) will have a clear deterrent effect on the initiation of competition in the markets affected.[44] Such rate structures should be revised to avoid the anti-competitive effect.

- USW loads very high charges into the area of HVAC. For example, USW imposes a charge of $133.33 per month for its maintenance of the AC equipment that is located in the collocators space. This charge is comparable to the "rent" for the space, and yet USW provides no explanation of the basis for this charge. Similarly, it charges $33.33 for maintaining the humidification systems added to the

[44] SWB imposes high up-front charges for construction and does not appear to provide for retroactive adjustments or pro rata refunds when additional collocators are added. SWB at 23.

collocators space, without adequate explanation.

- Most, if not all, LECs impose some kind of design and planning fees with regard to the space and build-out. These costs have generally not been justified. Since this is not complex space and there should be substantial commonality between the enclosures, this kind of activity is likely to be very modest. Therefore, any significant charges in this area are highly suspect and should be rejected unless clearly established.[45]

- USW has the large segment of its charges bundled in a single per circuit "EICT" charge - both NRC and RC - and it does not appear to include typical variables for length of cable runs, etc. This approach not only makes analysis of USW's charges difficult, but it also strongly suggests that where actual costs may be variable, USW has assumed or averaged "up", so that as least some collocators will be charged excessive rates.

- Ameritech's justification of its "full price lease back" of equipment, based upon its desire to avoid discrimination among collocators and non-disclosure of proprietary vendor information, strains credibility beyond normal bounds.[46] Ameritech at 19.

-Ameritech's charges for extraordinary costs must be viewed as patently unreasonable, in the absence of a detailed explanation and justification which it has

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[45] For example BA cites a $3,640 per interconnector fee for physical design and planning. Exhibit 3, Wp 5-3. This fee includes 8.5 hours of real estate planning and administration, clearly an inexplicable amount of time needed to determine where to put a 10 x 10 cage in a central office that has been indicatedfor collocation for almost a year now.

[46] There is no reasonable basis for not permitting the collocator to obtain quotes for the equipment, or even to provide the equipment.

not provided. Ameritech at 23. Their approach corresponds to allowing them to require a collocator to submit a blank check which they fill in.

-USW has used a "no comment approach" to justify high charges, relying on the argument that collocation creates for itself economic risks that it says it needs to cover (69), (70)

The above examples are merely representative of a much broader universe of highly questionable charges that the LECs propose to impose on their competitors, which have not been and ALTS believes cannot be justified as reasonable and non-discriminatory. Since the LECs seem determined to defend these exorbidant and anticompetitive rates, the Commission should undertake to prescribe rate structures and rates that are reasonable and will serve the Commission's objectives, and the public interest, without in any way harming the LECs or their customers beyond exposing them to real and unbiased competition.[47]

IV. THE LECS HAVE FAILED TO JUSTIFY NUMEROUS UNREASONABLE TERMS AND CONDITIONS THAT WOULD IMPOSE UNDUE BURDENS ON COLLOCATORS AND IMPEDE THE DEVELOPMENT OF COMPETITION.

In its March 15, 1993, Opposition, ALTS provided a detailed critique of the terms and conditions contained in the various LEC tariffs, discussed the manner in which numerous provisions are unreasonable, and urged the Commission to require specific revisions in order to avoid undue burdens and restrictions on collocators. Many of the

[47] In the limited time available it has not been possible for ALTS to complete a comprehensive review of all LEC direct case materials. As the investigation proceeds, ALTS intends to provide additional information to the Commission to aid in its review.

points made by ALTS were reflected by the Commission in its Designation Order, in requiring the LECs to justify why certain terms and conditions should be considered reasonable. Although some LECs have responded by voluntarily making a limited number of the changes (and clarifications) urged by parties and the Common Carrier Bureau, there remain many unreasonable terms and conditions that have not been, and cannot be, justified.

A. Space Size, Expansion, and Location.

Given the high prices that the LECs are proposing to charge for the space and the build-out, they have not justified the inflexible approaches taken to the increments of space that can be ordered. Moreover, the common requirement that any expansion of space by a collocator will be treated as an entirely new order is particularly unreasonable and burdensome, especially given the very high non-recurring charges imposed by many LECs.[48] Finally, while most LECs indicate they will make reasonable efforts to provide contiguous space where expansions are ordered, SWB's apparent determination to reserve the right to be unreasonable stands out.[49]

B. Dark Fiber Interconnection.

The thrust of the responses concerning the connection of dark fiber is that the LECs' current interconnection service offerings encompass only electrical interface between collocators and the LEC, and that dark fiber is only available between two customer premises, and the collocated space is not a "customer premise." Given that the Collocation

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[48] Such a requirement might be reasonable if the charges for new orders where themselves more reasonable.

[49] Southwestern Bell at 31.

Order did not limit the right to expanded interconnection to electrical interfaces, nor can the definition of "customer premises" be curtailed so sharply, the LECs' simplistic defence of their unreasonable position must be rejected.

C. Control Over Channel Assignment.

While many LECs expressed the concept that collocators would be permitted to control their channel assignments, their responses left much doubt as to whether in fact that would be the case. BS however, clearly states "It is necessary for BellSouth to retain assignment control in order to maintain accurate inventory of its facilities and equipment."[50]

D. Efficient Use of Space.

Although the LECs continually refer to practices in the commercial leasing industry in an attempt to justify their terms and conditions, in the case of provisions regarding efficient use of space they propose rights that fly in the face of such practices and are plainly unreasonable. A collocator should not have to meet some vague standard, or Pacific's "sole discretion" standard,[51] in order to use space that it has paid for in a reasonable manner according to its judgment. This is an area ripe for abuse, and the LECs have not justified why such a right is required and consistent with the overall arrangements they have proposed.

E. Termination Notice.

Particularly unjustified are the positions of BS and Pacific that fifteen days notice is

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[50] BS at Exhibit 6, pp. 5-6

[51] Pacific at 67.

adequate for the cure of an alleged breach, and the position of SWB that no specific notice periods are required in view of its month-to-month lease approach.[52] A termination may lead to either a suspension of service or an eviction, either of which would have a devastating impact on the collocator and its users. Moreover, the grounds for the termination may be in dispute. Under such circumstances, such a short notice period is plainly unreasonable, as is no specified notice period.

F. Grounds for Termination.

In its prior Opposition, ALTS provided specific comments concerning the termination provisions proposed by USW and other LECs. To reinforce those comments, no LEC should have the right to either suspend service or to evict a collocator for any breach other than a material breach, or to take such action unless the breach in question involved non-payment or active interference in the ability of the LEC to provide its services, and even then a reasonable opportunity for cure is essential. Further, there should be no right for a LEC to reclaim the space of a collocator absent such breach or extraordinary circumstances; in such circumstances (other than breach), such reclamation should be based on ample notice and full reimbursement of costs, and should be done on a basis that does not disrupt the collocator's provision of service to its end users. This non-disruption of service to users should be the touchstone of all termination rights and obligations.

G. Termination Due To Catastrophic Loss.

It is nothing short of incredible that several LECs insist that they must have no

[52] BS at Exhibit 6, p.7; Pacific at 68-69; Southwestern Bell at 39.

specific obligation to give early notice regarding catastrophic events and their plans regarding the repair and reconstruction of collocator space.[53] It is also plainly unreasonable for a LEC not to be financially responsible for damage to collocators' equipment and space for which the LEC is at fault, and to require the collocator to bear that expense. Reasonable provisions regarding these matters should be contained in LEC tariffs, in order to provide clarity for all parties.

H. Relocation.

This is an issue that has much in common with the "efficient use of space" issue. Here some LECs are proposing not only to have the right to forcibly relocate a collocator's space, but to do so on little or notice and even to make the collocator bear additional costs as a result.[54] Needless to say, these are not rights typically reserved by commercial landlords, and they have not been justified by the information submitted. Although it may be necessary in certain very limited circumstances to relocate a collocator's space,[55] except in extreme emergency situations no relocation should be permitted without (i) reasonable notice, (ii) no cost to the collocator, and (iii) no increase in the charges the collocator must bear (e.g., longer cable runs, special configurations, etc.)

I. Insurance Requirements.

While reiterating its previous position regarding the unreasonableness of the

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[53] See, e.g., GTE at 45-46, Pacific at 74-75, SWB at 41.

[54] See, e.g., Ameritech at 29 (no notice); BS at Exhibit 6, p.11 (no reimbursement).

[55] USW, for example, states that it does not foresee any general right to relocate (USW at 116), while Pacific and SWB insist they cannot even specify the reasons they may need to relocate (Pacific at 79; SWB at 42).

insurance requirements of USW and other LECs, the requirements of BA ($25 million in general liability) stand out as unjustified and outrageous.[56] Also, the very high ratings required by some LEDs are likely to create barriers to entry and are not justified, as seen by the lower and more reasonable requirements that other LECs accept.

J. Liability Limitations and Indemnification.

Many LECs try to justify severe limitations on liability, broad indemnifications, and lack of mutuality, by contending that such provisions are in their other tariffs. In a situation where the parties are collocated, and where its is at least as likely that a collocator will suffer property damage, personal injury, or other harm due to actions of the LEC as the reverse, typical service tariffs where the parties lack such a proximity and relationship are not apposite. At a minimum, no LEC should be relieved of liability for willful or grossly negligent acts or omissions, no party should indemnify the other against the results of its own negligence, and all provisions should have mutual application.

K. State/Interstate Billing.

There is no justification for NYNEX's departure from the practice of all the other LECs and from the rules applicable to special access services.[57]

L. Inspections.

The positions of the LECs appear to vary significantly with regard to their need and right to conduct inspections, but virtually none have justified these provisions, which carry the potential for abuse in the form of harassment, added costs, and disclosure of

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[56] BS at 11.

[57] See, NYNEX at 1-2, where it attempts to justify the use of PIU rather than the 10% rule.

confidential information. There is no basis for (i) any inspection without several days prior notice, except in the event of an emergency, (ii) routine inspections not based on documented problems occurring more frequently than every several months, (iii) any inspection of equipment unless there is evidence it is malfunctioning in violation of the terms of the tariff, and (iv) any charge to the collocator for such inspections. Moreover, no inspection should take place without the LEC agreeing to suitable protection of proprietary information.

V. CONCLUSION

The Commission's Expanded Interconnection policy is premised on the conclusion that significant public benefits will occur from expanded interconnection and collocation. The actions taken by the LECs first, in the filing of collocation tariffs with rates, terms and conditions, clearly designed to thwart rather than promote the development of competition and second, in their response to the Commission's investigation into these tariffs as articulated in their Direct Cases, indicates their total resistance to moving forward towards the Commission's Expanded Interconnection objectives. As ALTS has demonstrated herein, the LECs have not only failed, again, to support their initially filed rates, but they have chosen in many instances to ignore the Commission's request for the information necessary to evaluate the reasonableness of any of the filed rates, terms and conditions.

Based on the almost total defiance the LECs have exhibited in provisioning expanded interconnection as a just, reasonable and nondiscriminatory service, the Commission has no choice but to continue with this now overlong investigation and impose immediate remedies, including meaningful and material sanctions against noncompliant companies, and prescribe the rates, terms and conditions under which collocation will be offered. Without these actions Commission goals for a more competitive access market cannot be achieved.

Respectfully submitted,

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September 20, 1993

APPENDIX A

Eastern TeleLogic Corporation

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AFFIDAVIT

of

Gary E. Lasher, President and Chief Executive Officer

Eastern TeleLogic Corporation

I, Gary E. Lasher, do attest to the following:

1) In Philadelphia and its surrounding areas, my company has facilities located in over ten major points of presence of interexchange carriers.

2) Also in those offices are the facilities of Bell of Pennsylvania.

3) In many of those offices, interexchange carrier, competitive access provider and local exchange carrier equipment is grouped in a common workspace without separating cages, partitions or separate entrances.

4) Most common security procedures for access to the offices is as follows:

a) Carrier personnel sign in and out of facility.

b) Where escort is required it is for the purpose of unlocking the equipment room door, not to observe carrier performing work.

c) Full time escort is not required.

5) In six Eastern TeleLogic facilities, Bell of Pennsylvania has placed and operates equipment that is not separated from Eastern TeleLogic or other carriers' equipment by partitions or cages. Bell of Pennsylvania personnel enter and exit these common facilities in the same manner as prescribed in item 4 above.

I do certify that the above statement is true and valid to the best of my knowledge:

Gary E. Lasher, President and CEO

September 17, 1993
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 1993, copies of the foregoing RESPONSE OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES TO THE DIRECT CASES OF THE LOCAL EXCHANGE CARRIERS were served via hand delivery* or first class mail, postage prepaid, to the parties on the attached service list.

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